IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 74 OF 2005

Mr. Rohinton Rustom Irani .. Petitioner

Vs.

Mohammad Ismail, S/o Gulam Hussain .. Respondent

Mr. V.T. Walawalkar with Mr. Sameer R. Bhalekar for Petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : July 25, 2005.

P.C.:

1. Heard Mr. Walawalkar, the learned counsel for the applicant-tenant. In RAD Suit No.868 of 2001 declaration of lawful tenant along with the relief of injunction from dispossessing the suit premises was sought. The applicant is impleaded as defendant in the said suit instituted by the present respondent. The defendant raised preliminary issue stating that the suit structure would not be called as premises or fittings and it was only a stall independent of any structure. The evidence was led on this preliminary

issue and the trial court held that the objection taken was unsustainable. The order dated 27-3-2002 came to be challenged in Appeal No.522 of 2002. The Division Bench of the Small Causes Court dismissed the appeal on 15-2-2005 and hence this CRA.

2. Before the trial court the plaintiff did not step in the witness box. Instead his father deposed on his behalf. He stated in his examination-in-chief the description of the suit premises as under :-

> "The suit premises is on the plinth of the main building. The suit premises is five feet in length from Kamathipura lane to Shuklaji Street. It is 3 and half feet along the Shuklaji Street. It is having a height of 8 ft. Plinth is at the height of 2 ft. from the footpath and the height of the plinth to the roof of the suit premises is six feet. There is a Manglore tiles roof on the suit premises. The main building is also having a roof of Manglore tiles. The entire suit building is a ground floor structure. Back side wall of the suit premises is of a wooden plank. There is a shutter on Shuklaji side and also on Kamathipura side."

3. In the cross-examination he clarified that the

plinth was made of wooden material and the brick wall against which the structure was put up was part of the shop rented out. It is obvious that the suit premises admeasure 5 ft. x 3 1/2 ft. with a height of 6 ft. and roof of manglore tiles. It had two shutters. On one side there is a brick wall and on the other side a wooden plank. The suit premises could not be termed as "stall" and it appeared more like a room of 5 ft. x 3 1/2 ft. with 6 ft. height. Mr. Walawalkar, the learned counsel, referred to a decision of this court in the case of M/s. A.K. Porbunderwala and Sons v. Gulam Hussain Alibhai Nathani and anr. reported **in AIR 1974 Bombay 288**. In the said case the suit structure was a stall which was like a cupboard hanging on the outside wall of the premises in the possession of the defendants and abutted on the footpath. This court, therefore, held that the said structure could not be said to be premises as defined under Section 5(8) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The suit premises in the instant case cannot be compared with a stall. The brick wall of the rented shop could not be segregated from the suit structure and it is very much

evident that the wall was used for putting up the suit structure.

4. The concurrent view taken by both the courts below cannot be held to be manifestly erroneous so as to call for interference in this revision application. It is a possible view and, therefore, it need not be interfered.

5. The Civil Revision Application, therefore, rejected summarily.

(B.H. Marlapalle,J.)